



AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. The Bulletin occasionally includes information on legislative changes that affect the AAT and other important developments.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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AAT Recent Decisions

This section of the Bulletin provides information about decisions recently published by the AAT. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Archives

[Fewster and National Archives of Australia](#) [2014] AATA 295; 14/5/2014; Deputy President JW Constance

ARCHIVES – exempt records – information or matter the disclosure of which could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth – public interest certificate – role of Inspector-General of Intelligence and Security in review – disclosure contrary to the public interest – decision under review affirmed

Civil Aviation

[Hoore and Civil Aviation Safety Authority](#) [2014] AATA 292; 13/5/2014; Mr R Bartsch and Dr W Isles, Members

Conditions for commercial and private pilot license – cancellation of Class 1 and 2 medical certificates – medical standard for issuing Class 1 and 2 medical certificates – safety of navigation – safety relevant condition – malignant melanoma with spread to lymph nodes – special conditions – decision under review set aside and remitted with directions

PRACTICE AND PROCEDURE – whether Tribunal has jurisdiction to review decision – expired medical certificates – operative effect of Tribunal's decision – applicant's interests affected

STATUTORY INTERPRETATION – application of regs 67.180 and 67.195 of the *Civil Aviation Safety Regulation 1998* – whether the question posed by reg 67.180(2)(e)(ii) must answered favourably to the applicant before the question of imposing conditions pursuant can be considered – no evident basis for construing in such a restrictive manner – broad interpretation consistent with statutory purpose

Compensation

[Aucote and Samson Maritime Pty Ltd](#) [2014] AATA 296; 14/5/2014; President D Kerr

Seafarers compensation – determination of preliminary issue – jurisdiction of Tribunal – whether ship engaged in trade or commerce between Australia and a place outside of Australia

STATUTES – acts of Parliament – interpretation – use of extrinsic materials

[Gray and Comcare](#) [2014] AATA 287; 12/5/2014; Deputy President PE Hack SC

Whether the condition amounts to an injury – necessary relationship between condition and employment – decision under review affirmed

[Hubertz and Australian Postal Corporation](#) [2014] AATA 280; 9/5/2014; Deputy President SD Hotop

Employee of licensed corporation – applicant suffered right shoulder injury in May 2011 and left shoulder and neck injury in June 2011 in performance of employment duties – respondent accepted responsibility to pay compensation for injuries – respondent ceased payment of compensation for injuries in April 2013 – as at April 2013 applicant's ongoing pain symptoms not causally related to compensable injuries – from April 2013, and presently, respondent not liable to pay compensation to applicant for compensable injuries – decision under review affirmed

[Ward and Asciano Services Pty Ltd](#) [2014] AATA 288; 12/5/2014; Senior Member N Bell

Commonwealth employees – whether applicant continues to suffer the effects of his injury – whether pain as a result of the progression of applicant's degenerative back condition – decision under review affirmed

Immigration and Citizenship

[Yu and Minister for Immigration and Border Protection](#) [2014] AATA 283; 9/5/2014; The Hon. B Tamberlin QC, Deputy President

Citizenship by conferral – residence requirements – ministerial discretion – whether the applicant was the de facto partner of an Australian citizen at the time of the application for citizenship – decision affirmed

Practice and Procedure

[Cloros and Secretary, Department of Social Services](#) [2014] AATA 300; 28/4/2014; Senior Member NA Manetta

Jurisdiction – oral decision – whether Tribunal has jurisdiction to consider the directions of the SSAT

[Le and Comcare](#) [2014] AATA 291; 4/4/2014; Senior Member RM Creyke

Tribunal's function as a merits review tribunal – power to review whole of reviewable decision including all issues involved in reviewable decision

[Yan and Secretary, Department of Social Services](#) [2014] AATA 294; 14/5/2014; The Hon. B Tamberlin QC, Deputy President

SOCIAL SECURITY – appeal against refusal to extend time – application made out of time – whether Tribunal has jurisdiction to determine the matter – Tribunal only empowered to review decisions reviewed by the SSAT – no review undertaken by SSAT – proceedings dismissed for lack of jurisdiction

Social Security

[Adriaans and Secretary, Department of Social Services](#) [2014] AATA 284; 9/5/2014; Mr C Ermert, Member

Baby Bonus – taxable income of applicant and partner – claim within 52 week period – reasons for delay – not effective claim – claim not made – decision affirmed

[Khan and Secretary, Department of Social Services](#) [2014] AATA 298; 14/5/2014; Senior Member N Bell

Special Benefit – whether discretion to grant special benefit should be exercised – application of policy – decision under review affirmed

[Palmer and Secretary, Department of Social Services](#) [2014] AATA 297; 14/5/2014; Deputy President PE Hack SC

Disability support pension — back injury — whether criteria for a rating of 20 points satisfied – decision under review affirmed

[Sleiman and Secretary, Department of Social Services](#) [2014] AATA 286; 12/5/2014; Senior Member N Isenberg

Disability Support Pension – physical impairment – permanent conditions – whether the applicant had an impairment rating of 20 points or more under the impairment tables — decision under review affirmed

[Youssef and Secretary, Department of Social Services](#) [2014] AATA 290; 13/5/2014; Senior Member N Bell

Disability Support Pension – DSP – impairment tables – applicant does not meet impairment rating requirement – applicant does not satisfy requirement to participate in a program of support – decision under review affirmed

Taxation

[Lighthouse Financial Advisers \(Townsville\) Pty Ltd and Commissioner of Taxation](#) [2014] AATA 301; 15/5/2014; Deputy President IR Molloy

GST – supply – settlement of legal matter – whether settlement involved taxable supply – whether payment was consideration for release from restraint clause – whether payment made in consideration of surrender of right to sue – objection decision affirmed

Tax Agents

[Li and Tax Practitioners Board](#) [2014] AATA 299; 14/5/2014; Senior Member JL Redfern

Registration as tax agent – termination of registration and prohibition on applying for registration for 3 years – refusal to renew registration – whether “fit and proper person” – breaches of the Code of Professional Conduct – unwitting involvement in fraud by third parties – failure to keep client information confidential – failure to take reasonable care in establishing client’s circumstances – failure to provide tax agent services competently – decision under review affirmed

Veterans' Affairs

[Mason and Repatriation Commission](#) [2014] AATA 293; 14/5/2014; Senior Member BJ McCabe

VETERANS’ AND MILITARY COMPENSATION – application for pension at special rate – applicant’s cervical spondylosis contributes to inability to work – cervical spondylosis not service-related – failure to satisfy “alone test” – reviewable decision affirmed

Appeals

This section of the Bulletin provides information about appeals against AAT decisions that have been lodged or finalised. Only appeals in relation to AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Clements v Secretary, Department of Social Services & Ors	[2014] AATA 243
Comcare v Kostas	[2014] AATA 217
Thorpe v Commissioner of Taxation	[2014] AATA 210

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **14 May 2014**.

[Statement of Principles concerning malignant neoplasm of the prostate No. 53 of 2014](#)

[Statement of Principles concerning malignant neoplasm of the prostate No. 54 of 2014](#)

[Statement of Principles concerning chronic multisymptom illness No. 55 of 2014](#)

[Statement of Principles concerning chronic multisymptom illness No. 56 of 2014](#)

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